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6 BEFORE THE STATE OF WASHINGTON
7 ENERGY FACILITY SITE EVALUATION COUNCIL

8 In the Matter of Application No.
9 99-1:

0 SUMAS ENERGY 2
1 GENERATION FACILITY
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ABBOTSFORD AND
ABBOTSFORD CHAMBER OF
COMMERCE'S MOTION FOR
ADDITIONAL TIME TO
RESPOND TO NESCO'S
MOTION FOR
RECONSIDERATION

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4 I. MOTION

5 On March 5, 2001, NESCO filed its Motion for Reconsideration. This was
6 19 days after the Council entered its Order recommending denial of the SE2
7 project. On March 7, 2001, the Council transmitted by e-mail a letter indicating
8 that responses to the motion would be due by March 16, 2001. Given the scope
9 and length of the Motion for Reconsideration and other commitments of counsel,
10 the City of Abbotsford and the Abbotsford Chamber of Commerce would be
11 prejudiced by having to file their response within that short period of time.
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13 Abbotsford requests that it be allowed until March 30, 2001 to file its response.
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17 ABBOTSFORD'S MOTION FOR ADDITIONAL
18 TIME TO RESPOND TO NESCO'S MOTION
19 FOR RECONSIDERATION - 1

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2 **II. BRIEF STATEMENT OF GOOD CAUSE FOR ADDITIONAL TIME**

3 A. The Motion for Reconsideration is 37 pages and covers many issues
4 in considerable detail. A new, 18 page draft SCA and a 23 page document of
5 proposed conditions also were submitted for review and approval. Preparing an
6 adequate response to the motion and the accompanying proposals will require
7 consultation with noise and air pollution consultants and review of an extensive
8 administrative record and voluminous transcripts of testimony.
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0 In addition, NESCO has accompanied its motion with the submission of
1 new evidence. This requires responding parties, potentially, to obtain other new
2 evidence in response.
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4 In addition, the motion raises significant legal issues that will require
5 additional legal research given that there is little precedent in this area. An
6 adequate response to the motion will require research into issues such as the
7 appropriate standards to be employed by the Council in considering the Motion
8 for Reconsideration (NESCO never addresses this issue); the issue of whether the
9 Council can accept new evidence from NESCO at this time and, if so, on what
10 terms; and whether a Motion for Reconsideration is the proper vehicle to suggest
11 amendments to an SCA application.
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14 B. Counsel for Abbotsford is more than 100 percent committed between
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1 now and March 16, 2001 and simply cannot provide adequate attention to this
2 matter during that time. Counsel is currently working on a reply brief in a
3 Superior Court matter. That brief is being filed in rebuttal to nearly 300 pages
4 of briefing filed by four responding parties. That brief is due Monday, March 12,
5 2001 and will require virtually all of counsel's attention through that time.
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7 C. Counsel for Abbotsford then has another brief due (an opening brief
8 on the merits to be filed with the Eastern Washington Growth Management
9 Hearings Board) on Friday, March 16, 2001 -- the same date currently set for
0 submission of Abbotsford's response to the Motion for Reconsideration.
1 Effectively, counsel has only three and a half days to prepare that Hearings
2 Board brief. It is impossible for counsel to adequately prepare a response to the
3 Motion for Reconsideration in this action during that same time.
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5 D. Abbotsford's counsel also has a Superior Court reply brief on the
6 merits due in a Land Use Petition Act matter due on March 23, 2001. Thus, it
7 would be best if the response brief to this Motion for Reconsideration were not
8 due until March 30, 2001. (Providing additional time to March 23, 2001 for the
9 filing of the response to the Motion for Reconsideration would be better than the
0 current March 16, 2001 deadline but still would not be adequate under the
1 circumstances.)
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4 E. We are unaware of any substantial harm that will result if adequate
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1 time is provided to counsel for preparing Abbotsford's response to the Motion for
2 Reconsideration. This matter has been pending before EFSEC for more than a
3 year. While delays should not be granted without good reason, a continuance of
4 a mere two weeks seen from the perspective of this entire proceeding is very
5 slight indeed.
6

7 III. CONCLUSION

8 We are close to the end of the road and appreciate the desire of all to draw
9 this matter to a conclusion as soon as **reasonably** possible. It simply is not
0 "reasonable" at this time for Abbotsford to file an adequate response to a motion
1 for reconsideration in the period of time allotted by the Council.
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Dated this _____ day of March, 2001.

Respectfully submitted,

BRICKLIN & GENDLER, LLP

By: _____
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Abbotsford Chamber of Commerce

and

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